

**REMARKS**

Applicants submit these Remarks in reply to the Office Action mailed February 13, 2008. Following this Amendment, claims 1-20 are pending in this application, of which claims 1, 7, and 8 are independent. Applicants amend claims 1-8 to incorporate minor changes to the claim language. In addition, Applicants add new claims 9-20. Claims 11-13 and 16-18 mirror the recitations of original claims 2-4, and claims 9-10 and 19-20 find support at least at pages 5-6 of the Specification. Accordingly, these amendments introduce no new matter.

In the Office Action, the Examiner took the following actions:

- i. objected to claims 7-8 under 37 CFR 1.75(c) as being in improper multiple dependent form,
- ii. rejected claim 7 under 35 U.S.C. § 101 as being directed to non-statutory subject matter, and
- iii. rejected claims 1-8 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Publication No. 2002/0032777 by Kuwata ("Kuwata").

**I. Claim Objections**

Applicants have amended claims 7 and 8 to place them in independent form. Therefore, Applicants respectfully suggest that these amendments obviate the Examiner's objection under 37 CFR 1.75(c).

**II. Claim Rejections Under 35 U.S.C. § 101**

Applicants have amended claim 7 to overcome the Examiner's rejection under § 101. "When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be

statutory in most cases since use of technology permits the function of the descriptive material to be realized.” M.P.E.P. § 2106.01, citing *In re Warmerdam*, 33 F.3d 1354, 1360-61, 31 USPQ2d 1754, 1759 (Fed. Cir. 1994) (holding that a claim to a computer having a specific data structure stored in memory is statutory under 35 U.S.C. § 101). Amended claim 7 now recites a “computer-readable medium that stores a set of instructions that when executed performs a method of routing external computer inquiries.” At least these recitations render claim 7 and its dependents, claims 11-15, statutory. Accordingly, Applicants respectfully request that the Examiner withdraw the 35 U.S.C. § 101 rejection.

### **III. Claim Rejections Under 35 U.S.C. § 102(b)**

In the Office Action, the Examiner rejected claims 1-8 under 35 U.S.C. § 102(b) as being anticipated by *Kawata*. Office Action at 3. To establish anticipation under § 102(b), the Examiner must show that *Kawata* discloses each and every element of the Applicants’ claims, either expressly or inherently. See *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Furthermore, the identical disclosure “must be shown in as complete detail as is contained in the ... claim.” See M.P.E.P. § 2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Applicants respectfully submit that the Office has not established a proper rejection under § 102(b) because *Kawata* does not disclose each recitation of Applicants’ amended claims.

Applicants’ independent claim 1, as presently amended, calls for a combination including, for example, “rerouting a second inquiry from the first computer to the second

computer if the processing time exceeds a standard time.” *Kawata* fails to teach or suggest at least this feature.

*Kawata* discloses a system that “provides load balancing based on the real-time load status of servers.” *Kawata* at Abstract. To that end, *Kawata* employs a “load balancer 100, which distributes the service requests from the clients 105 to the servers.” *Id.* at ¶ 0037 (referencing Fig. 1). The server selection module of the load balancer determines which among a set of servers should receive a request by comparing the servers’ respective “load evaluation values.” See e.g., *id.* at ¶¶ 0040, 0067. These load evaluation values indicate the present load of each server and depend on several indicators including, e.g., “response time, CPU load, and response data size.” See *id.* at ¶ 0009. Indeed, *Kawata* describes at ¶ 0098 calculating the load evaluation value using a weighted formula: (standard deviation of response time)\*(weight of response time)+(standard deviation of CPU load)\*(weight of CPU load). Thus, server response time represents only one factor contributing to the load evaluation value.

While *Kawata* uses response times to derive load evaluation values for each server, it does not hint comparing response times to a standard time value and rerouting when the response time exceeds the standard time. Instead, *Kawata* routes service requests by comparing the load evaluation values of the servers against each other, i.e. other load evaluation values. Thus, *Kawata* does not teach or suggest “rerouting . . . if the processing time exceeds a standard time” as recited by independent claim 1.

Nor do *Kawata*’s teachings allow a proper inference that rerouting occurs when the processing time exceeds a standard time. “To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in

the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted). As noted, server response time represents only one weighted factor of the determinative load evaluation value described in *Kawata*. Yet, *Kawata* does not identify the relative amount of weight to accord the response time factor. Moreover, even if *Kawata* did provide as much, routing would nevertheless depend on a comparison of server load evaluation values and not a reference to a standard time.

The Examiner cites *Kawata* at paragraph 0067, lines 3-8 for disclosing the above-identified recitation. That paragraph, however, also fails to present any anticipatory disclosure. Instead, it merely describes two ways the system of *Kawata* may use load evaluation values to route service requests. For example, it describes that the system may simply select "the server with the lowest evaluation value." *Id.* at ¶ 0067. Or, in the alternative, it may select a server in a "round-robin" fashion, "where if [] the load evaluation value of the selected server is at or greater than a certain threshold value . . . the server is not selected and the next server in the round-robin is selected." *Id.* For the same reasons described above, therefore, neither of these described uses of the load evaluation value fairly represents "rerouting . . . if the processing time exceeds a standard time."

Moreover, the remaining art identified by the Examiner as "pertinent to applicants' disclosure," i.e., *Tobe*, *Yu*, *Takahashit*, and *Brendel*, also fails to disclose at least this feature.

For at least these reasons, none of the cited art of record discloses every recitation of Applicants amended independent claim 1. Further, claims 7 and 8, though they differ in scope from claim 1, contain recitations similar to those discussed above for claim 1 and are patentably distinguishable over the cited art for the same reasons. Finally, because dependent claims 2-6, and 9-20 necessarily include the recitations of their respective independent claims, none of the cited art teaches or suggests every limitation of the dependent claims. Accordingly, Applicants respectfully request that the Examiner withdraw the rejections under 35 U.S.C. § 102(b) against pending claims 1-20.

#### **VI. Conclusion**

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims. The claims may include other subject matter that is not shown, taught, or suggested by the cited art. Accordingly, the preceding remarks in favor of patentability are advanced without prejudice to other possible bases of patentability.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: April 1, 2008

By:



Brannon McKay  
Reg. No. 57,491  
(404) 653-6410